

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the application of: Feldstein
Serial No.: 09/917,649
Filed: 07/31/2001
For: FLUIDICS SYSTEM
Examiner: Ludlow, Jan M.
Art Group Unit: 1743

Honorable Commissioner of Patents
PO Box 1450
Alexandria, VA 22313-1450

June 8, 2006

PETITION UNDER 37 C.F.R. § 1.181 TO WITHDRAW HOLDING OF ABANDONMENT

Sir:

This petition is filed pursuant to 37 CFR 1.181 and MPEP 711.03(c)(I).

STATEMENT OF FACTS

On 10/07/2005, a final office action was mailed to Applicant. On 12/07/2005 Applicant submitted a reply containing an amendment. An RCE was not included with the amendment. It was the intention that an RCE would be filed subsequently if the amendment was not entered. Also on 12/07/2005, Applicant's representative filed a response in another application (10/384,925) including an RCE and an extension of time. These forms, including the fax cover sheet, mistakenly included the identifying information from the present application. These papers were entered into the image file wrapper of the present application. Upon noticing the error, a petition to expunge the RCE and extension of time was filed on 12/13/2005.

Subsequent to the petition to expunge, but before a decision was made on the petition, another new, non-final office action was mailed on 02/22/2006 containing a restriction requirement. The office action acknowledged the RCE and indicated that the amendment of 12/07/2005 had been entered. Applicant responded to the restriction on 03/22/2006.

On 05/17/2006 a decision on petition was mailed, granting the petition to expunge. On 05/30/2006 an advisory action was mailed stating that since the RCE was removed, the office action of 02/22/2006 was withdrawn and the reply of 03/22/2006 was moot. The amendment of 12/07/2005 was not entered because it raised new issues. On 06/02/2006 a notice of

abandonment was mailed because the reply of 12/07/2005 was not a proper reply to the final rejection.

ARGUMENT

At the time of the 02/22/06 office action, the petition had not yet been decided, and so, it appears that the Examiner acted on the RCE. However, at the time, the USPTO was on notice that the RCE was unintended, despite its appearance in the record. The office action contained no indication that the amendment would not be entered without the RCE, so Applicants had no reason to file a proper RCE and believed that prosecution of the application would continue. The petition was not decided until more than six months from the date of the final rejection. Applicants could not have known that the application would go abandoned until the decision on petition.

An RCE is attached so that the amendment of 12/07/2005 may be entered upon withdrawal of the holding of abandonment. Applicants respectfully request that the holding of abandonment be withdrawn.

In the event that this petition is not grantable, Applicants request that this petition be considered to be a Petition for Revival of an Application Abandoned Unintentionally. The attached RCE is the required reply. The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition was unintentional. The fee for this petition, if necessary, may be charged to Deposit Account No. 50-0281.

No fee is required for this petition. However, in the event that a fee is required, please charge the fee to Deposit Account No. 50-0281, and in the event that there is a credit due, please credit Deposit Account No. 50-0281.

Respectfully submitted,



Joseph T. Grunkemeyer
Reg. No. 46,746
Phone No. 202-404-1556
Office of the Associate Counsel
(Patents), Code 1008.2
Naval Research Laboratory
4555 Overlook Ave. SW
Washington, DC 20375-5325